

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7115 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MUKTABEN B PORIA

Versus

STATE OF GUJARAT

Appearance:

MR HA RAICHURA for Petitioners

Mr. B.Y.Mankad, AGP for the Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 21/01/99

ORAL JUDGEMENT

The petitioners have filed the present petition for a direction to respondents to extend the benefit of revised pay scale of Rs.380-560 with effect from 1.1.73 as pay scale of Rs.1320-2040 with effect from 1.1.86 with all benefits and back wages as may be available under the provisions of Gujarat Civil Service (Revision of Pay) Rules, 1975 and Gujarat Civil Service

(Revision of Pay) Rules, 1979 as revised from time to time.

2. The petitioner no.1 was initially appointed on the post of staff nurse with effect from 3.10.67 in the Aayurvedic hospital. The petitioner was given the benefit of revised pay scale of Rs.260-400 with effect from 1.1.73 as per Desai Pay Commission and subsequently that pay scale was revised to pay scale of Rs.900-1500 with effect from 1.1.86. The petitioner no. 2 was initially appointed in the Ayurvedic hospital with effect from 10.1.63 and she was also given the revised pay scale as stated above. The petitioner no. 3 was also initially appointed in the Ayurvedic hospital with effect from 16.8.82 and similarly she was also given the revised pay scale. The petitioner no. 4 was initially appointed in the Health and Medical Services in the State of Gujarat and subsequently was allocated to Ayurvedic hospital from 10.6.65 as midwife/staff nurse and she was also given the revised pay scale. The petitioner no. 5 was also appointed in the Ayurvedic hospital on the post of staff nurse and she was also given the revised pay scale. The petitioner no. 6 was initially appointed in the Ayurvedic hospital on the post of midwife/staff nurse and revised pay scale was also allowed to her. Similarly, the petitioner no. was initially appointed in the Health and Medical Services on the post of staff nurse with effect from 1.1.45 and she was also extended the benefit of revised pay scale and she retired on 1.10.79. As per Gujarat Civil Service (Revision of Pay) Rules, 1975, other staff nurses similarly situated have been extended the benefits of revised pay scale with effect from 1.1.73. The petitioners made a representation to the Government for extension of revised pay scales, but the Government did not extend the benefit of higher pay scale. The respondent no. 2 Director of Indian System of Medical Homeopathic sent a proposal for extending benefit of pay scale to trained staff nurses, auxiliary staff nurses and necessary action was to be taken when the Government took a decision. Similarly situated Auxiliary nurses and midwives discharging their duties in Ayurvedic hospital filed Special Civil Application no. 3238 of 1979 which was allowed by this Court quashing the impugned Resolution dated 11.1.78 and directed to extend the benefit of revised pay scale for the post of staff nurse to the petitioners of that petition with all back wages which are available under Gujarat Civil Service ((Revision of Pay) Rules, 1975 by an order dated 2.2.82.

3. The respondent no. 2 has filed an

affidavit-in-reply stating therein that the petition is not maintainable. The petitioners are not trained and qualified nurses registered with Gujarat Nursing Council and therefore, in absence of thereof, this petition deserves to be dismissed. It is further averred that the petitioners were auxiliary nurses and midwives within the meaning of section 2(1) of Gujarat Nurses and Midwife and Health Visitors' Act, 1968. The Act also defines nurse under section 2(j). Auxiliary Nurses and Midwives and Nurses are two separate posts and cadres which cannot be equated with each other. All the petitioners are trained and registered and working as auxiliary nurses and midwives and hence they are entitled to get the benefit of pay scale prescribed for the post. It is also stated that the petitioners are not similarly situated like the petitioners of Special Civil Application no. 3238 of 1979 as subject matter of that petition was downgraded and not the pay scale. The qualification for being admitted to the course of nurse was matriculate at the relevant time, while for auxiliary midwife was 7th standard pass. The training course for nurse was 3.1/2 years while the course for auxiliary nurse and midwife was only 1.1/2 years. Both the posts are different and training is different. The qualification is also different. Therefore, the post of the petitioners cannot be equated with nurse defined in the Act. The petitioners were trained and registered and working as Auxiliary nurses and midwives. It is a different post and duties are difference. However, it is admitted that the petitioners were accommodated against the post of staff nurse as they were working as auxiliary nurses and midwives and therefore, they are not entitled to the pay scale of staff nurse as claimed by them.

4. No one appears on behalf of the petitioners. I have heard the learned AGP Mr. Mankad and have gone through the relevant papers.

5. In Special Civil Application no. 3238 of 1979, the petitioners were appointed as Auxiliary nurses and midwives wherein the pay scale of staff nurses and auxiliary nurses and midwives was elaborately considered. The grievance of the petitioners of that petition was that inspite of the representation made by the petitioners and others similarly situated employees for non-extension of benefits of the revised pay scales, according to Desai Pay Commission to them, though they were discharging their duties of staff nurse since 1963, the State Government has not extended the benefits of the revised time scale sanctioned for the post of staff nurse. But on the contrary, by a Resolution dated 18th

January, 1978 of the Health and Family Welfare Department, it was decided to downgrade 51 posts of staff nurse in the pay scale of Rs.260-400 from those of 380-560 as those 51 posts were not qualified for being appointed to the post of staff nurse. It was admitted in the aforesaid case that the petitioners were discharging duties as staff nurse since July, 1963. Eventhough the Government has allocated the petitioners and other similarly situated employees on the post of staff nurse. There was nothing on record to show that inspite of specific attempts were made by the Government, no qualified persons were available for being appointed to the post of staff nurse and it was also observed in that petition that no doubt the petitioners and other similarly situated employees were not qualified to be sisters for which the qualification was the passing of BPNA examination which is a three years' course. This Court by its order dated 2nd February, 1982 quashed the impugned Resolution dated 11.2.1978 whereby 51 posts of staff nurse who were not qualified for being appointed to the post of staff nurse was quashed and the State was directed to extend the benefit of revised pay scale for the post of staff nurse to the petitioners with all back wages and all other consequential benefits admissible under Gujarat Civil Service (Revision of Pay) Rules, 1975. In the present case, admittedly the petitioners are working on the post of staff nurse. Their posting was as Auxiliary midwife and Midwife. Hence, they have been denied the pay scale of staff nurse. In view of the fact that this Court in Special Civil Application no. 3238 of 1979 has taken a view that midwives and Auxiliary nurses who were working on the post of staff nurse are also entitled to the benefit of staff nurse and nothing contrary has been shown by the learned AGP in this case. As such, I have no option but to accept to extend the benefit of revised pay scales to the petitioners available under Gujarat Civil (Revision of Pay) Rules, 1975 and the petition deserves to be allowed.

5. Thus, the petition is allowed and the respondents are directed to extend the benefit of revised pay scale for the post of staff nurse to the petitioners under Gujarat Civil Service (Revision of Pay) Rules, 1975 with all back wages and consequential benefits available under Gujarat Civil Service (Revision of Pay), Rules 1975. Rule is made absolute accordingly with no order as to costs.

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